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7 UNITED STATES BANKRUPTCY COURT
8

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 **In re**
12 **THUAN-VU D HO,**

13 **Debtor.**

14 **Case No. 14-50354 SLJ-7**
Chapter 7

15 **MOTION FOR ORDER AUTHORIZING**
SALE OF REAL PROPERTY, SUBJECT
TO OVERBID, AND PAYMENT OF
REAL ESTATE COMMISSIONS

16 **Date:** December 9, 2015
Time: 2:00 p.m.
Place: Courtroom 3099
280 South First St.
San Jose, California
Judge: Hon. Stephen L. Johnson

21 Kari Bowyer, Chapter 7 trustee ("Trustee") of the bankruptcy
22 estate of debtor, Thuan-Vu D Ho ("Debtor"), hereby files this
23 Motion for Order Authorizing Sale of Real Property, Subject to
24 Overbid, and Payment of Real Estate Commissions, and represents as
25 hereinafter set forth.

26 1. Debtor filed his voluntary Chapter 7 bankruptcy petition
27 on January 30, 2014.

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1 2. In connection with settlement of an adversary proceeding
2 approved by the Court, the estate acquired the real property
3 located at 24563 Corte Jaramillo, Murietta, California, Assessor's
4 Parcel Number 949-384-003-4 (the "Property"). The Property is a
5 single-family home and a rental property. The legal description of
6 the Property is as follows:

7 Lot 56 of Tract No. 23050-1, in the City of Murietta,
8 County of Riverside, State of California, As Per Map
9 Recorded in Book 203, Pages 9 through 14 inclusive of
Maps, in the Office of the County Recorder of Said
County.

10 3. The Trustee has accepted an offer from, and seeks
11 authority to sell all of the estate's right, title and interest in
12 the Property to, the current tenants of the Property, Lawrence
13 Segura and Melissa Segura (the "Buyers"), for the purchase price of
14 \$370,000 ("Purchase Price") as set forth in a Residential Purchase
15 Agreement, Addendum to Purchase Agreement and Seller Counter Offer
16 No. 1 (collectively the "Purchase Agreement"). Pursuant to the
17 Purchase Agreement, the Buyers will receive a \$2,075 credit for
18 their security deposit previously paid against the Purchase Price.
19 In addition to the Purchase Price, the Buyers will continue to pay
20 rent of \$2,075 per month through close of escrow or until the
21 rental terms expires on December 1, 2015, whichever is later. The
22 Trustee has accepted the offer of the Buyers subject to (a)
23 Bankruptcy Court approval and (b) the opportunity for other parties
24 to submit overbids. There are no contingencies in this sale. The
25 sale of the Property is on an as-is, where-is basis with no
26 representations or warranties by the Trustee.

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1 4. The Purchase Agreement replaced a previously submitted
2 offer from Buyers with the same terms which appeared to provide for
3 a dual broker as further explained in the Trustee's declaration
4 filed contemporaneously herewith.

5 5. The Trustee listed the Property for sale at \$429,000 in
6 June immediately after title was transferred to the estate.
7 Several open houses were held. She received only the one offer
8 from Buyers who are also the current tenants of the Property.
9 Based on the Trustee's marketing efforts and the advice of her
10 broker, she has concluded that the sale to the Buyers for \$370,000
11 represents a fair market value. Notwithstanding, she is continuing
12 to market the Property and will do so subsequent to the filing of
13 this motion. She will advise all potentially interested parties of
14 the opportunity to submit overbids as set forth below.

15 6. The Trustee requests that in the event the Buyers do not
16 close the transaction, that she be authorized to sell the Property
17 on the same terms and at the same price to an alternate purchaser
18 without a further order of the Court.

19 7. The Trustee also requests authority to take whatever
20 actions are necessary to consummate the transactions provided for
21 herein, including the execution of documents.

22 8. Further, the Trustee will retain the right to negotiate
23 minor changes to the Purchase Agreement, including minor changes to
24 the price, without further Court order.

25 9. Based upon the Residential Listing Agreement entered into
26 between the Trustee and Steven M. Speier of American Spectrum
27 Management Group, Inc. ("Trustee's Broker"), since Buyers do not
28 have a broker, the Trustee intends to pay a real estate commission

1 equivalent to four percent (4%) of the gross sales price to
2 Trustee's Broker.

3 10. In the event there is a successful overbid and the buyer
4 is represented by a broker, the real estate commission to be paid
5 by the Trustee will be equivalent to five percent (5%) of the gross
6 sales price, which would be split between the Trustee's Broker and
7 the broker of any successful overbidder.

8 11. Regardless of whether the Court authorizes the sale of
9 the Property to Buyers or to a successful overbidder, Trustee's
10 Broker has agreed that the following costs to be paid by the
11 Trustee pursuant to the terms of the Purchase Agreement shall be
12 paid by Trustee's Broker and deducted from the commission otherwise
13 payable to Trustee's Broker:

- 14 a. Owner's title insurance policy;
- 15 b. County and/or city transfer tax or fee; and,
- 16 c. Homeowner's Association ("HOA") transfer fee and/or
17 any and all HOA fees, if any.

18 12. The Trustee will be paying from escrow amounts secured by
19 the first priority deed of trust (estimated to be \$250,000), real
20 estate commissions, any real estate tax due (approximately
21 \$4,000/year) prorated between Buyers and the Trustee, and ordinary
22 costs of sale according to custom subject to the exceptions with
23 regard to costs paid by Trustee's Broker as set forth above.

24 13. Overbid Terms: One of the conditions of the offer is that
25 it is subject to overbids. Trustee submits the following terms and
26 conditions for the submission of overbids to purchase the Property:

- 27 a. The Trustee has given Buyers "overbid protection" of
28 \$5,000. Therefore, the minimum overbid must be at least \$375,000;

1 b. After the first overbid, the amount of bidding
2 increments will thereafter be no less than \$1,000;

3 c. Bids must be an all cash offer or pre-approved loan,
4 and the offer must not contain loan contingencies, inspection
5 contingencies or any other contingencies. Overbids must be in
6 writing, submitted without condition, and must be on the same terms
7 as Buyers' offer with the exception that any offer must include a
8 provision that states the buyer is purchasing the Property subject
9 to the tenancy of Buyers and the current lease and further, that
10 the deposit shall be \$5,000.

11 d. The written overbid shall be accompanied by a
12 deposit of \$5,000 in the form of a cashier' check or other
13 certified funds payable to "Kari Bowyer, Trustee" and delivered to
14 the Trustee in care of Trustee's counsel at the address set forth
15 above, no later than 12:00 p.m. on Monday, November 30, 2015.
16 Deposit checks will be held by counsel until completion of the
17 auction referred to and described below.

18 e. If the successful bidder fails to consummate the
19 purchase, the \$5,000 deposit will NOT be refunded to the successful
20 bidder, but will be retained by the Trustee as liquidated damages.
21 Deposits will be returned to the unsuccessful bidders, other than
22 the backup offer, upon the conclusion of the auction.

23 f. In the event the Trustee receives any overbids, the
24 overbid auction will take place on Friday, December 4, 2015, at
25 2:00 p.m. at the Property.

26 g. The bidder will be required to close escrow within
27 thirty (30) days of entry of an order of the Bankruptcy Court
28 approving the sale.

1 h. The sale is expressly subject to approval of the
2 United States Bankruptcy Court for the Northern District of
3 California.

4 i. The sale will be on an as-is, where-is basis,
5 without any representations or warranties, express or implied. Any
6 disputes with respect to the sale will be resolved by the United
7 States Bankruptcy Court in its sole and complete discretion.

8 j. The Trustee may accept a backup offer at the
9 auction.

10 k. The Trustee reserves the right, in her sole
11 discretion, to refuse bids which do not, in her sole opinion,
12 conform with the terms of the sale, to modify these terms and
13 conditions or to continue the sale from time to time. The Trustee,
14 in her sole discretion, will determine the highest and best bid.

15 l. Bidders or representatives of the bidders may have
16 an opportunity to attend the auction telephonically, at the
17 Trustee's discretion.

18 14. Parties interested in submitting overbids should arrange
19 for inspections as soon as possible by contacting Trustee's Broker,
20 Steven M. Speier of American Spectrum Management Group, Inc. at
21 sspeier@asrmanagement.com, 949-753-5863 or 949-510-4018. The
22 Trustee is selling the Property in its "as is" condition without
23 any representation or warranty. She expects any overbid to be
24 submitted without inspection or financing contingencies.

25 15. If no qualifying overbid is received (and no objection to
26 the sale is filed), the Trustee will request entry of an order by
27 the Bankruptcy Court authorizing the sale to the Buyers for
28 \$370,000.

1 16. It is the Trustee's intent to request a waiver of any
2 stay on the effectiveness of the order imposed by Rule 6004(h) of
3 the Federal Rules of Bankruptcy Procedure.

4 **WHEREFORE**, the Trustee requests entry of an order authorizing
5 the relief sought above.

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7 Dated: October 29, 2015 LAW OFFICE OF MARLENE G. WEINSTEIN
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9 By: /s/ Marlene Gay Weinstein
10 MARLENE G. WEINSTEIN
11 Attorney for Kari Bowyer
12 Chapter 7 Trustee
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